IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE TWENTY FIFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT APPEAL NO : 2099 of 2002

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 19.7.2002 in WP NO : 6396 OF 2001 on the file of the High Court.)

Between:

The Secretary, State Board of Technical

Education & Training, BRKR Bhavan, Tankbund,

Hyderabad.

..... APPELLANT

AND

1. Mohd. Tayyab, S/o Md.Yakub,

aged 20 years, R/o Kothagudem,

Khammam District.

2. The Principal,

Government Polytechnic,

Kothagudem, Khammam District.

3. The Regional Joint Director,

State Board of Technical Education and

Training, Gagan Vihar Road, Hyderabad.

.....RESPONDENTs

For the Appellant: MR.P.V.S.S.S.RAMA RAO , Advocate
For the Respondent No1.: Mr.C.Damodar Reddy, Advocate
For the Respondents 2 and 3: GP FOR TECHNICAL EDUCATION

The Court made the following :

Order: (per Sri BRSR.J)

The 1st respondent in this writ appeal filed the writ petition invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ of Mandamus declaring the action of the appellant herein in not receiving the examination fee and the application of the petitioner for the final year DME course to be held from 10.4.2001 as bad, arbitrary and illegal. He has also prayed for a consequential direction directing the appellant hereinto receive the examination fee and his application and permit him to appear for final year DME examination to be held from 10.4.2001.

The simple case set up by the writ petitioner is that he had taken a demand draft on 5.3.2001 in the name of the Commissioner, State Board of Technical Education and Training and went to the office for submitting the examination application but the staff of the Board refused to receive his application and the demand draft stating that he was not eligible for appearing at the examination on the ground of shortage of required attendance. According to the petitioner, the attendance registers were not properly maintained by the staff of the Government Polytechnic, Kothagudem, Khammam District. The staffs used to take the attendance of the students attending the classes on loose white papers and mark them in the registers subsequently. The staff never brought the attendance registers to the classrooms. The sum and substance of his case is that he has put in requisite attendance and on account of mistake of the college where he has studied and undergone the course, it was shown as if there was shortage of attendance.

The Principle of the College filed a detailed counter affidavit inter alia stating that the writ petitioner has attended III year classes with effect from 11.7.2000 even though the regular class work commenced from 3.7.2000 as per the academic

calender for
2000-2001. It is stated in specific terms that the writ petitioner attended 118 days out of the total working days of 203 and thereby secured only 58% of attendance during 2000-2001. The requirement in law is that a candidate should possess 75% of attendance for appearing in the regular examinations. However condonation of attendance upto 10% on medical grounds is permissible and the said power can be exercised by the Secretary, State Board of Technical Education and Training on payment of Rs.150/- towards the condonation fee. The details of the attendance of the writ petitioner every month are also stated. The counter discloses that out of 203 working days, the writ petitioner was present only on 118 days, which amounts to 58% of attendance.

We are not inclined to accept the self-serving averments made by the writ petitioner in the affidavit filed in support of the writ petition. We do not find any reason or justification to ignore and over look the averments made by the Principle of the College in the counter affidavit which is supported by the affidavit filed by the appellant herein.

It appears that at the time of admission of the writ petition, interim order was passed directing the appellant herein to receive the examination fee and the application of the petitioner and permit him to appear for the examination. The writ petitioner accordingly appeared in the examination. But the fact remains that he failed in the examination. When the writ petition came up for hearing, the learned Single Judge passed the following order.

> "In view of the direction granted by this Court on 9.4.2001 directing the respondents to receive the examination fee and application of the petitioner and permit the petitioner to appear for examination, the relief sought for by the petitioner is satisfied. However, the respondents are now directed to declare the results of the petitioner in respect of the said examination.
>
> With this direction, the writ petition stands disposed of."

The learned Single Judge did not examine the issue as to whether the appellant or for that matter, the 2nd respondent herein committed any irregularity or illegality in maintaining the attendance of the writ petitioner. There is no finding by the learned Judge that the writ petitioner in fact attended all the classes but

erroneously and arbitrarily the Principe and the Staff did not maintain the proper registers in the institution. Even without recording any such finding, the learned Single Judge directed the appellant herein to declare the results of the petitioner in respect of his examination. With due respect to the learned Judge, the view taken is not correct. This Court in exercise of its jurisdiction under Article 226 of the Constitution of India cannot compel the authorities to act contrary to law. The interim directions granted by this Court itself does not confer any indefeasible right upon the writ petitioner to appear for the examination and for the declaration of the results. The writ petitioner is not entitled to appear for the examination in view of shortage of attendance.

Be it as it may, in pursuance of the directions of this court, the appellant herein had declared the result of the petitioner in which the writ petitioner failed. Therefore, the petitioner cannot derive any benefit out of the interim orders or the final order passed by this Court.

For the aforesaid reason, the order under appeal is set aside. It shall be open to the petitioner to undergo the study of course once again and put in requisite attendance to qualify himself to appear for the III year examination of DME course. The Principle, Government Polytechnic, Kothagudem, Khammam District shall consider the application of the petitioner to be filed and permit him to undergo the course in order to enable him to complete the requisite attendance. There shall be an order accordingly.

The writ appeal shall accordingly stand allowed. No costs.

(B.SUDERSHAN REDDY,J)

DT.25..08..2004

(K.C.BHANU,J)

Note: Furnish CC by day after tomorrow

JOINT REGISTRAR

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SECTION OFFICER

To,

1. The Secretary, State Board of Technical

Education & Training, BRKR Bhavan, Tankbund,

Hyderabad.

2. The Principal,

Government Polytechnic,

Kothagudem, Khammam District.

3. The Regional Joint Director,

State Board of Technical Education and

Training, Gagan Vihar Road, Hyderabad.

4.2 ccs to GP for Technical Education,

High Court of A.P., Hyderabad.

5. 2 CD copies.